THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.Nos.4061, 4173, 4368, 4427 &
4557 of 2007

COMMON ORDER:

These writ petitions are filed seeking a Mandamus declaring the action of the respondents in orally threatening the petitioners to remove them from service of the first respondent in the name of restructuring its cadre strength as arbitrary, unjust, illegal, discriminatory and violative of Articles 14, 16 and 21 of the Constitution of India and principles of natural justice.

All the petitioners are working in various cadres of first respondent bank for the last 20 years in various capacities viz, Assistant Account, Clerk-cum-Cashier, Sub-Staff etc. The first respondent Bank has 18 branches all over the State and the same are being run by 550 employees including temporary till 2002-2003. They have been working to the utmost satisfaction of the respondents and the general public at large and there was no complaint whatsoever from any quarter and they have unblemished record of service to their credit for all these years. In the guise of restructuring its cadre strength, the first respondent in the year 2003, removed 121 temporary employees and subsequently in the month of August 2005 removed 232 regular employees. Having done so, the authorities are resorting to remove the petitioners from service without any rationale whatsoever and without issuing notice of any kind. Petitioners are far seniors to those who are being continued in view of the orders of the Court. Therefore the action of the respondents is in gross violation of principles of natural justice,

discriminatory apart from being contrary to the principle of last come first go.

In fact, when the first respondent Bank terminated the services of regular employees in the month of August 2003, some of them have approached the Industrial Tribunal-cum-Labour Court. The Industrial Tribunal-cum-Labour Court set aside the termination orders and directed reinstatement of workmen into service. Challenging the same, the first respondent Bank carried the matter by way of W.P.No.15872 of 2006 before this Court and the same was dismissed by order dated 20.12.2006. By virtue of this, all those persons who are far juniors to the petitioners are being continued, whereas petitioners who are seniors are being subjected to removal.

It is the case of the petitioners that the first respondent Bank is under the control of second respondent-Reserve Bank of India, therefore, the first respondent should have obtained prior approval of the second respondent before taking any steps for removing them. In fact, no such permission was taken. The first respondent bank is functioning financially well. Apart from this, a revival package has been announced by the State Government recently. The first respondent Bank has got deposits of 34.00 crores lying with APCOB in various branches and an amount of Rs.8.00 crores is lying in the form of Government deposits and has a cash reserve of Rs.8.00 crores is being spared and the cash on hand is Rs.30.00 lakhs and the deposits in various Current Accounts lying with other banks is to a tune of Rs.12.00 lakhs while other recovery debts running to a tune of Rs.109.00 crores. Thus, it comes to Rs.159.42 crores, out of which, deposits of Rs.34.00 crores lying with APCOB would be alone sufficient to accrue to the Bank an amount of

Rs.27.00 lakhs per month at the rate of 8% interest. The total burden on the first respondent Bank towards payment of salaries to the petitioners would be Rs.9.00 lakhs. Therefore, the entire episode of periodical de-strengthening is only to ensure the closure, but not revival. Thus, the action of the respondents in terminating the services of the petitioners in the guise of restructuring is nothing but a camaflogue. The termination orders were made ready on 27.2.2007 itself with an intention to serve on the petitioners on 28.2.2007. The decision to terminate the services of the petitioners without notice is reported in the Press also on 28.2.2007.

The first respondent is a Cooperative Urban Bank registered under the A.P. Cooperative Societies Act, 1964 and it is governed by the Cooperative Societies Act and the Banking Regulation Act. The first respondent Bank has been granted licence vide letter of the second respondent dated 13.7.1982 to carry on banking business in terms of Section 22(i) read with Section 56(o) of the Banking Regulation Act, 1949. The first respondent went into financial crunch in the year 2002-2003. The Reserve Bank of India, by invoking powers under Section 35-A of the Banking Regulation Act, 1949 gave directions dated 7.3.2003 restraining the Bank from incurring any liability or sanctioning/renewing loans/advances or making payments or discharge any liabilities or obligations except in accordance with the directions contained in the directive No.UBD (SEB/D-48/12.03.1298/2002-03 dated 7.3.2003 and directed to give statement of accounts. The relevant portion of the letter dated 7.3.2003 reads as under:

> "The Reserve Bank of India is satisfied that in the public interest, it is necessary to issue certain directions to Vasavi Cooperative Urban Bank Ltd., Hyderabad.

> Accordingly, the Reserve Bank of India in exercise of the powers vested in it under sub-section 91 of Section 35-A of the Banking Regulations Act, 1949 (as applicable to Cooperative schemes) read with Section 56 of the Banking Regulation Act, 1949, hereby directs that Vasavi Cooperative Urban Bank Ltd., Hyderabad from close of Business of 7th March, 2003 shall not without prior approval in writing from the Reserve Bank of India grant of renew any loans and advances make any investment incur any liability including borrowal of funds and acceptance of fresh deposits to disburse or agree to disburse any payment whether in discharge of its liabilities and obligations or otherwise either into any compromise of arrangements and sell transfer or otherwise dispose of any of its properties or assets except to the extent and in the manner provided hereunder:
>
> (i)……..
>
> (v) Incurring any expenditure that may be required to be met by the Bank in respect of the following terms:
>
> a) salaries of employees.

The Bank was also directed to give statement of accounts every month. Thus, the first respondent Bank came under the direct control of second respondent-Reserve Bank of India with effect from 7.3.2003.

In the counter affidavit filed by the respondents while denying the allegations made by the petitioners, inter alia stated that there was severe liquidity crisis in the Bank resulting in imposition of restrictions by the Reserve Bank of India under Section 35-A of the Banking Regulation Act, 1949 with effect from 7.3.2003. Government of Andhra Pradesh by invoking powers under Section 32(7)(a) of A.P. Cooperative Societies Act (for short 'the Act') issued orders in G.O.Rt.No.170, Agricultural and Cooperation Department

dated 6.3.2003 appointing a Person Incharge Committee to manage the affairs. The financial position of the Bank has not improved subsequent to the imposition of restrictions by the Reserve Bank of India vide its orders dated 7.3.2003. The Commissioner for Cooperation and Registrar of Cooperative Societies by invoking powers under Section 116-C of the Act vide proceedings dated 20.6.2006 directed to reduce the strength of the Bank to 45 duly indicating the strength to be retained in different disciplines. The Reserve Bank of India in its inspection report communicated vide letter dated 23.1.1997 directed to take action on the basis of inspection report and submit compliance within six weeks. As per paras 6.6 and 7.1 of RBI inspection report, as on 31.3.2006, the Bank was directed to take steps to reduce the staff as approved by the Registrar of Cooperative Societies. The bank has accumulated net loss of Rs.97.13 crores as on the end of financial year 2005-2006, whereas the expenditure on salaries is around Rs.17.00 lakhs per month. Before issuance of the orders dated 28.2.2007, the strength of the staff is 128 and there is no work for more than 75% of the staff. The reduction in the staff would save the expenses at Rs.10.76 lakhs per month and the same can be utilized for discharge of depositors liabilities. In order to comply with the provision of Section 116-C as directed by the Registrar of Cooperative Societies vide proceedings Rc.No.38649/2000-UB.V dated 20.6.2006 read with directive of Reserve Bank of India dated 23.1.2007, the Bank has reviewed the staff position by a staff committee. The staff committee has recommended for dispensing with the services of the surplus staff over and above the cadre strength approved by the Registrar of Cooperative Societies duly

paying the amount of one month salary in lieu of one month notice and gratuity as admissible under the Payment of Gratuity Act to the respective Savings Bank Accounts of the employees whose services were to be dispensed with. The Person Incharge Committee in its meeting held on 27.2.2007 accepted recommendations of staff committee. On coming to know the decision of the person in charge committee dated 27.2.2007, some of the writ petitioners and others whose services were sought to be dispensed with have abstained from attending to duties on 28.2.2007 and some of the employees although attended to duty, refused to receive orders. Therefore, notices were affixed at the notice board of the Bank Head Office and the branches and the individual notices were dispatched to the last known addresses available with the Bank. Thus, there is no illegality in dispensing with the services of the petitioners.

The learned counsel for petitioner strenuously contended that the action of the respondents in terminating the services of the petitioners is highly arbitrary and illegal while continuing juniors, seniors are being terminated. The last come first go method was given a go-bye and pick and choose method was adopted. Petitioners were all selected and appointed after regular process of selection and their services were confirmed in their respective posts. In fact there is no provision under the service rules of the Bank for terminating the services of an employee. Therefore, the question of terminating the services of the petitioners does not arise. The statements of first respondent Bank that the Bank is in financial doldrums is not correct. The staffing pattern as approved by the Registrar of Cooperative Societies under Section 116-C of the Act through proceedings dated 20.6.2006 is nothing but

ratifying the action of the Managing Director. In fact there is no approval by the Board of Directors of the Bank for such proposal being sent to Registrar of Cooperative Societies. In fact a revival package is being considered for revival of the Bank and the income earned by way of interest itself comes to more than Rs.3.00 crores per annum, whereas the total expenditure to be payable towards salaries for 120 employees comes to Rs.17.00 lakhs per month. Thus, the contention of the Bank that the Bank is in doldrums and they are not able to pay salaries, therefore there is a reduction of staff is incorrect.

Per contra, the learned counsel appearing for first respondent Bank Sri G.Vidyasagar submitted that the oral termination orders were challenged and no amendment was made to the writ petitions. Even otherwise, the writ petitions are not maintainable since the first respondent is not amenable to the writ jurisdiction under Article 226 of the Constitution of India and not a State within the meaning of Article 12 of the Constitution. The Board resolution is nothing but resolution of the Person Incharge Committee. Therefore, it cannot be said that there was no proper resolution passed by the Board for the purpose of terminating the services of the petitioners. The last come first go theory was followed. In fact the Registrar of Cooperative Societies had instructed for restructuring of staffing pattern under Section 116-C of the Act, therefore, the first respondent had to comply with the same. There is no scope of revival of the Bank and no banking activities are being undertaken except recovery of the amounts. Therefore, there is no necessity of continuing the petitioners in service. The first respondent can always look into its own affairs as to proving the staffing pattern and

in this direction, when the bank's financial position was in critical condition, the Person Incharge Committee was appointed and as per his recommendations, the bank is taking steps for restricting the staff pattern. Accordingly, when the proposals were placed before the Registrar of Cooperative Societies, he had approved the same as per Section 116-C of the Act. If really, the Bank is revived, petitioners are entitled for a preferential treatment, but it cannot be said that the Bank has committed any infirmity in terminating the services of the petitioners calling interference by this Court under Article 226 of the Constitution of India. Under extreme circumstances in the interest of general public, this harsh decision had to be taken.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned orders and other material made available on record.

At the outset, I am of the opinion that the first respondent has acted in haste in terminating the services of the petitioners by order dated 28.2.2007. Firstly, no material has been placed by the first respondent before this Court to show that the Board of Directors of the Bank have taken a decision for the purpose of restructuring of the staffing pattern. The contention of the first respondent that in view of the recommendations of the Person Incharge Committee, the first respondent had to take a decision and sought approval of the Registrar of Cooperative Societies, seems to be not correct. No reasons have been furnished for restructuring the staffing pattern even in the letter addressed to the Registrar of Cooperative Societies. In the letter of the Registrar of Cooperative Societies, the details of 45 personnel were given, but the details as to who are the

persons engaged for recovering the amounts is not available and the basis for coming to such conclusion is also not available.

Further, the fact that when the juniors to the petitioners who are sought to be retrenched from service, they raised an Industrial Dispute, whereunder the termination order passed by the respondents was declared to be illegal and when the matter was carried by way of W.P.No.15872 of 2006 before this Court and the same was dismissed by order dated 20.12.2006 is also not in dispute. It is also not in dispute that no notice of any kind was issued to the petitioners before their services were sought to be terminated by order dated 28.2.2007. Further, it is interesting to note that the revival package offered by the Government is not in dispute. The details of outstanding loans to be recovered and deposits of respondent Bank in other banks are as under:

Amounts to be recovered from loanees crores	..	Rs.106.00
Recovered amount deposited at RBI, APCOB, Govt. Securities crores	..	Rs. 53.00
TOTAL AMOUNT	..	Rs.159.00 crores
Amounts to be paid to deposit holders Along with interest. crores	.. (-)	Rs.135.00
Balance		Rs. 24.00 crores

LOANS RECOVERED FROM DECEMBER 2006 TO 20TH OCTOBER 2007

1.	December 2006	1,18,00,000/-
2.	January 2007	41,78,000/-

3.	February 2007		56,96,000/-
4.	March 2007		62,52,000/-
5.	April 2007		15,73,000/-
6.	May 2007		25,44,000/-
7.	June 2007		22,41,000/-
8.	July 2007		42,63,000/-
9.	August 2007		2,01,44,000/-
10.	September 2007		1,76,84,000/-
11.	October 2007	upto 20th	11,41,000/-
	TOTAL		7,85,16,000/-

The fact that the interest gained from deposits in APCOB, RBI and Government Securities to a tune of Rs.3.00 crores per annum and the salaries paid to 120 employees to a tune of to Rs.17.00 lakhs per month is also not in dispute. In fact it is the contention of the learned counsel for petitioners that the petitioners are only 56 personnel and due to their efforts only, the said recoveries were made and not otherwise.

Thus, the statement of the first respondent that the Bank is in financial doldrums appears to be not correct. The staffing pattern as approved by the Registrar of Cooperative Societies under Section 116-C of the Act through proceedings dated 20.6.2006 is nothing but ratifying the action of the Managing Director. In fact there is no approval by the Board of Directors of the Bank for sending such proposal to the Registrar of Cooperative Societies. The revival package is also under active consideration by the Government. The income earned by way of interest itself shown as more than Rs.3.00 crores per annum, whereas the total expenditure to be payable towards salaries for 120 employees comes to Rs.17.00 lakhs per month. The principles of natural justice were given a go-bye while passing the impugned order dated 28.2.2007. The principle of last

come first go was not followed. The impugned orders are passed in gross violation of principles of natural justice apart from being contrary to the procedure required to be followed by a model employer in terminating the services of its employees. It appears, since juniors whose services were terminated, approached the Labour Court and succeeded and the said lis has attained finality, the respondents are after the petitioners herein. In fact, there cannot be any necessity of terminating the services of the petitioners in view of the revival package offered by the Government. The services of the petitioners are required for recovery of huge loan amounts to be collected by the Bank.

For all the above reasons, the impugned orders dated 28.2.2007 passed by the first respondent-Bank are liable to be set aside and accordingly set aside. The writ petitions are accordingly allowed. There shall be no order as to costs.

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C.V.RAMULU, J

Date: 7.12.2007

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THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.Nos.4061, 4173, 4368, 4427 &
4557 of 2007

7.12.2007

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.Nos.4061, 4173, 4368, 4427 &
4557 of 2007

Date: 7th December, 2007

Between:

K.Uma Prasad & others. .. Petitioners in W.P.No.4061 of 2007

K.Ramesh & others. .. Petitioners in W.P.No.4173 of 2007

M.Usha Rani & others. .. Petitioners in W.P.No.4368 of 2007

D.Dushyanth Kumar & others. .. Petitioners in W.P.No.4427 of 2007

K.Venkateswara Rao & others. .. Petitioners in W.P.No.4557 of 2007

And

Vasavi Cooperative Urban Bank Ltd.,
Malakpet, Hyderabad, rep. by its
Managing Director & others. .. Respondents